

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 05-0012  
Sales and Use Tax  
For The Tax Period 2002-2004**

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**ISSUES**

**I. Sales and Use Tax - Imposition**

**Authority:** IC 6-8.1-5-1 (b), IC 6-2.5-2-1, IC 6-2.5-3-2 (a), IC 6-2.5-2(c)(1), IC 6-6-6.5-8(d), 45 IAC 2.2-5-15, 45 IAC 2.2-4-27 (d).

The taxpayer protests the assessments of use tax on three airplanes.

**STATEMENT OF FACTS**

The taxpayer is a limited liability corporation which bought an airplane in each of the years 2002, 2003, and 2004. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed Indiana use tax, interest, and penalty on each of the airplanes. The taxpayer protested the assessments of use tax. A hearing was held and this Letter of Findings results.

**1. Sales and Use Tax -Imposition**

**Discussion**

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC 6-2.5-2-1. Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC 6-2.5-3-2 (a). Payment of sales tax at the time of purchase exempts the use of tangible personal property from the use tax. IC 6-2.5-2(c)(1).

IC 6-6-6.5-8(d) provides for the payment of sales or use tax on an airplane as follows:

A person shall pay the gross retail tax or use tax to the department on the earlier of:

- (1) The time the aircraft is registered; or
- (2) not later than thirty-one (31) days after the purchase date;

unless the person presents proof to the department that the gross retail tax or use tax has already been paid with respect to the purchase of the aircraft as proof that the taxes are inapplicable because of an exemption.

The taxpayer bases its claim for exemption on the following provisions of IC 6-2.5-5-8 which states as follows:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property. . . .

The law concerning the exemption for rental to others is further explained at 45 IAC 2.2-5-15 as follows:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

- (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
- (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
- (3) The property is resold, rented or leased in the same form in which it was purchased.

(c) Application of general rule.

- (1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or value to the property through the rendition of services or performance of work with respect to such property.

- (2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.
- (3) The property must be resold, rented or leased in the same form in which it was purchased.

The taxpayer states that it was in the business of renting aircraft and therefore qualifies for this purchase for rental exemption. This exemption requires compliance with three elements. One of these requirements is that the taxpayer must be engaged in the reselling, renting or leasing of such property in its regular course of business. In the taxpayer's situation, the taxpayer is a limited liability corporation that rents airplanes only to its owners/members. In other words, the owners of the airplanes rent the airplanes to themselves. This is not an arms length transaction. This does not satisfy the requirement that the airplanes be rented in the regular course of the taxpayer's business.

The taxpayer also argues that the owner/members who operate its airplanes paid a lower lease rate because the owner/members paid for the gasoline pursuant to dry lease provisions. The taxpayer argues that the addition of the cost of the fuel to the lease would bring the lease rate closer to comparable lease rates. The taxpayer argues that the sales tax on the lease and the sales tax on the fuel collected and remitted by fuel sellers total the correct amount of sales tax due to the state.

The issue of an appropriate lease rate is addressed at 45 IAC 2.2-4-27 (d) as follows:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

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The rental rates charged by the taxpayer on which it collects and remits sales tax are not based upon the total cost of the airplanes. Rather, each owner/member pays monthly dues of two hundred dollars (\$200.00) per month to defray the business costs of operating the airplanes such

as insurance. This amounts to a reduction of the rental rates to reflect a deduction for expenses or costs incidental to the maintenance and operation of the airplanes. No sales tax is being collected on that portion of the actual receipts.

The taxpayer's use of the airplanes does not qualify it for the purchase for rental exemption from the use tax.

### **Finding**

The taxpayer's protest to the assessment of use tax on its airplanes is denied.